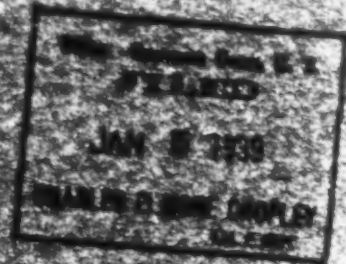


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No. 300

Yale Supreme Court of the United States

October Term, 1938

THE UNITED STATES OF AMERICA, PETITIONER

CHARLES F. TOWNE, BY HIS OWN RIGHT AND AS
ADMINISTRATOR OF THE ESTATE OF ROBERT C.
TOWNE, INCORPORATED

VS. MARY OF MONTGOMERY TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

DEED FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 360

THE UNITED STATES OF AMERICA, PETITIONER

v.

CHARLES F. TOWERY, IN HIS OWN RIGHT AND AS ADMINISTRATOR OF THE ESTATE OF ROBERT C. TOWERY, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court of the United States for the Northern District of Illinois rendered no opinion. The opinion of the Circuit Court of Appeals (R. 11-16) is reported in 97 F. (2d) 906.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 18, 1938 (R. 16). The petition for a writ of certiorari was filed September 17, 1938, and granted October 24, 1938 (R. 18). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the six-year limitation provision in Section 19 of the World War Veterans' Act, 1924, as amended, began to run against the respondent's suit to recover installments of total permanent disability benefits under a contract of war risk term insurance on the date as of which each installment of such benefits accrued, or as of a date not later than the last day the insurance was in force by premium payments.

2. Whether the same limitation provision began to run against the suit of the respondent as the beneficiary of such a policy upon the date of the insured's death, at a time when the policy was not in force by premium payments, or as of a date not later than the last day the insurance was in force by premium payments.

STATUTES INVOLVED

Section 19 of the World War Veterans' Act, 1924, as amended July 3, 1930, c. 849, 46 Stat. 992 (U. S. C., Title 38, Sec. 445), provides in part:

In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the district court of the United States in and for the district in which such persons or any one of them resides, and juris-

diction is hereby conferred by such courts to hear and determine all such controversies.

* * * All persons having or claiming to have an interest in such insurance may be made parties to such suit, and such as are not inhabitants of or found within the district in which suit is brought may be brought in by order of the court to be served personally or by publication or in such other reasonable manner as the court may direct. In all cases where the bureau acknowledges the indebtedness of the United States upon any such contract of insurance and there is a dispute as to the person or persons entitled to payment, a suit in the nature of a bill of interpleader may be brought by the bureau in the name of the United States against all persons having or claiming to have any interest in such insurance in the Supreme Court of the District of Columbia or in the district court in and for the district in which any such claimants reside:***

No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after the date of approval of this amendatory Act, whichever is the later date, and no suit on United States Government life (converted) insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided*, That for the purposes of this section it shall be deemed

that the right accrued on the happening of the contingency on which the claim is founded: *Provided further*, That this limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director. * * * No State or other statute of limitations shall be applicable to suits filed under this section.

The term "claim" as used in this section, means any writing which alleges permanent total disability at a time when the contract of insurance was in force, or which uses words showing an intention to claim insurance benefits and the term "disagreement" means a denial of the claim by the director or someone acting in his name on an appeal to the director.

Other statutes mentioned in this brief, together with Congressional committee reports and bulletins of the Treasury Department, appear in the Appendix, *infra*, pp. 40-48.

STATEMENT

Charles F. Towery, the respondent, brought this suit in the District Court of the United States for the Northern District of Illinois, in his own right and as administrator of the estate of Robert C. Towery, upon claims under two war risk term insurance policies alleged to have been issued to the plaintiff's decedent while in the military service of the United States. Respondent sought to recover total permanent disability benefits under the

policies in his capacity as administrator, and death benefits as the beneficiary designated in the policies (R. 1-4).

It was alleged in the complaint that the premiums on the policies were deducted from the insured's pay during his military service, from which he was discharged June 18, 1919; that he became totally and permanently disabled while the policies were in force,¹ on June 18, 1919; that he died April 22, 1927; that on May 2, 1927, respondent was appointed administrator of his estate; that on February 11, 1932, respondent made claim for disability and death benefits under the policies; and that his claim was denied by the Veterans' Administration on August 8, 1935 (R. 1-4). This suit was brought on June 29, 1936 (R. 1).

The Government moved to dismiss the suit (R. 5) on the ground, in effect, that it was barred by the six-year limitation provision contained in Section 19 of the World War Veterans' Act, 1924, as amended (*supra*, p. 3). After hearing on the motion, at which no evidence was introduced (R. 9), the motion was granted and judgment was entered for the Government (R. 5-6, 9).

Respondent appealed, assigning error to the ruling on the motion (R. 7).

¹ Under the regulations of the Bureau of War Risk Insurance (Treasury Decision No. 45, *infra*, Appendix, p. 44), the first premium subsequent to the insured's discharge from military service became due July 1, 1919, and the grace period for the payment of that premium expired July 31, 1919.

The Circuit Court of Appeals for the Seventh Circuit reversed, holding (R. 11-16):

(1) That the suit was not barred by the limitation provisions of Section 19, *supra*, as to respondent's claim as administrator to any installments of total permanent disability benefits which had accrued within six years prior to the filing of the claim for such benefits in the Veterans' Administration; and

(2) That the suit was in time as to all benefits claimed by respondent as beneficiary of the policies.

The court below, in its opinion, stated that the statute itself did not define the "contingency" on the happening of which, under its terms, "the right accrued for which the claim is made" and the limitation began to run, but said that the term "contingency" must be construed in the light of the policy provisions. Purporting to construe the term in this light, the court was of the view that, as to the claim for total permanent disability benefits, the limitation did not begin to run against suit as to any particular installment of such benefits until the installment accrued and that, as to respondent's claims as beneficiary, it did not begin to run until the death of the insured.

While conceding that, in cases like the one at bar, it would be "an essential fact" of a beneficiary's claim "that total and permanent disability occurred at a time prior to the discontinuance of the payment of premiums," since no "valid contractual obligation" would otherwise arise in his favor on

the death of the insured, the court below based its decision that the death of the latter was "the contingency on which the claim is founded" and which started the limitation running, upon the fact that there were "no enforceable legal claims for the payment of benefit installments" until then and upon the court's interpretation of the policy as giving the beneficiary, upon the death of the insured, the right to the payment of a determinable amount of benefits.²

It is stated in the opinion, in substance, that if, upon the maturity of the policy by total permanent

² The exact sum of money to be paid on the date of death of an insured (unless no beneficiary is living) cannot be determined at that time since, if the beneficiary dies before 240 installments have been paid, the commuted value of the unpaid installments (which includes no interest since no installments are then deferred in payment) becomes payable to the estate of the insured in one sum. Section 303, World War Veterans' Act, 1924, as amended March 4, 1925, U. S. C., Title 38, sec. 514, *McCullough v. Smith*, 293 U. S. 228. When the contract matures by disability, the exact sum of money to be paid cannot then be determined because, if the insured dies with no beneficiary designated, the commuted value of the unpaid installments is paid to his estate under Section 303, *supra*, or, if the beneficiary survives the insured, but dies before receiving all of the 240 installments, less those accrued prior to death, the commuted value of the unpaid installments is likewise paid under Section 303, *supra*. Moreover, if the insured remains totally permanently disabled for more than 240 months, a continuance of benefits (for which no premium is charged) is provided (see discussion, *infra*, pp. 20-21) and, if the insured recovers from his disability, the obligation to pay benefits is relieved. (See Bulletin I, Appendix, *infra*, p. 42; Section 301, World War Veterans' Act, 1924, as amended July 3, 1930, U. S. C., Title 38, sec. 512.)

disability, the amount of the *disability* benefits which would be payable to the insured had also been determinable, "the 'happening of the contingency on which the claim is founded' would be the inception of the condition of total and permanent disability," even though the amount was payable in installments; but that, in the case of such benefits, as distinguished from those to which the beneficiary would be entitled, "the right of the insured to receive any particular payment of a monthly installment cannot accrue legally until the payable date arrives during continuance of disability";^a and that it necessarily follows that the limitation could not run as to any particular installment of such benefits before the payable date of such installment, "since the arrival of the payable date during continuance of disability consummates the contingency upon which the claim is founded."

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that, although the right of an insured or his personal representative to installments of war risk term insurance benefits is dependent upon the existence of total permanent disability of the insured during the life of the policies, the statute of limitations, nevertheless, did not begin to run against suit to recover any installment

^a No basis exists for a distinction between the beneficiary and the insured or his personal representative as to the determinability of the amounts payable. See footnote 2, *supra*, p. 7.

which accrued after the life of the policies until such installment became payable.

(2) In adopting an interpretation of the statute of limitations which leaves no time limitation whatever upon suits by veterans insured under war risk term insurance policies to recover total permanent disability benefits under such policies and, in this connection

(a) in holding that the number of monthly installments payable as benefits under such policies, by reason of total permanent disability, is limited to two hundred forty, and

(b) in failing to hold that the monthly installments of such benefits are payable throughout the duration of total permanent disability, regardless of how long it might continue.

(3) In failing to hold that the statute began to run as to each of the respondent's claims upon the date of the existence, within the life of the contract, of the total permanent disability of the insured which establishes the obligation to pay benefits in accordance with the terms of the contract.

(4) In failing to hold, therefore, that the latest date on which the six-year limitation could begin to run as to either of the respondent's claims to any benefits was July 31, 1919, the last day on which insurance protection existed.

(5) In disregarding the termination of the suspension of the limitation upon the effective date of the denial of respondent's claim for total perma-

ment disability benefits in the Veterans' Administration, in its computation of the number of installments of benefits payable prior to the filing of the claim.

(6) In reversing the judgment of the District Court.

SUMMARY OF ARGUMENT

I

Respondent's suit, brought on June 29, 1936, to recover benefits under an insurance policy on which no premiums were paid after the month of June 1919, was not in time under the provisions of Section 19 of the World War Veterans' Act, 1924, as amended July 3, 1930, limiting the time for bringing such suits to "six years after the right accrued for which the claim is made," or one year after the date of the Act, "whichever is the later date."

It is in effect conceded in the opinion of the court below that the suit was not in time unless it could be regarded as brought within the six-year limitation period. We submit that it was not so brought, since that period began to run not later than July 31, 1919, the last day on which the policy remained in force by premium payments.

1. Despite the language of the statute showing an obvious intention to place a limitation upon *suit*, the construction adopted by the court below would provide as to disability benefits merely a limitation upon the *number of installments recoverable* by suit. This is apparent from the fact that there is no

limitation upon the number of installments payable under the policy during the total permanent disability of the insured, so that suit could be brought at any time on any one of the several million policies which were originally issued, so long as the insured remains alive. Moreover, if the construction of the statute adopted by the court below were given effect, it would be possible to reopen many cases, including two decided by this Court, in which the suits have been held to be barred by limitations.

2. The construction adopted by the court below is also at variance with an essential purpose of the statute to protect the Government against suits on stale claims.

When the original limitation provisions were enacted in 1928 Congress was, presumably, aware that, if an indefinite period were allowed for suit, it would be difficult, and in many cases impossible, for the Government to prepare a proper defense to a suit which might be brought upon any of the more than three million policies on which no premiums had been paid since the War, since the principal issue involved in each of such cases would be whether the insured was totally permanently disabled prior to a date, at least as early as 1919, when the policy would otherwise have expired for nonpayment of premiums.

Also, there would seem no justification for a construction of the statute, such as that adopted by the court below, which would have the effect of bar-

ring suit to recover some installments of disability benefits, but not others. Defense would be equally difficult as to all installments, and there would seem no basis for thus affording protection against suit as to only part of a stale claim.

Furthermore, the provisions in question, as construed by the court below, would, in reality, not restrict even the number of installments ultimately recoverable, for, if a judgment should be recovered for any installments, the maturity of the insurance would thereby be established and the Veterans' Administration, being subject to no time limitation upon the claims considered by it, would presumably pay also any installments barred from recovery by suit, if they were claimed.

3. Under the interpretation of the court below it would be possible for a beneficiary, as well as the insured himself, to bring suit based upon the existence of total permanent disability many years in the past. It would seem reasonable to assume that Congress considered the Government to be as much in need of protection against such suits by the beneficiary as against such suits by the insured. Moreover, there is no apparent reason why the beneficiary should be given the privilege of bringing suit in such cases after the insured himself has lost that privilege. The beneficiary is merely a "volunteer" whose rights are derived from the beneficence of the insured in designating him as such, which designation the insured may change at any time. Also, Congress could deprive the bene-

ciary of his rights under the policy by giving them to others even after the death of the insured. The fact that the benefits sought by respondent as beneficiary did not become payable to him as such until after the death of the insured has no significance with respect to limitations since his position in this respect is obviously no different from his position as administrator.

4. The very nature of the Government's obligation under the insurance contract indicates that the six-year limitation was intended to run from the happening of the contingency relied upon as having matured the contract. It is apparent from the terms of the contract that upon the happening of either total permanent disability or death while the insurance is in force the insurance itself ceases, since there is substituted for it at that time the obligation of the Government to pay benefits according to the terms of the contract. The mere fact that the obligation is to be discharged by payment in monthly installments does not alter its nature or the date from which limitations logically should and was intended by Congress to run. We submit that it is the right to the benefits of the contract which arises correlative to the obligation of the Government to pay them which Congress had in mind in providing that limitations should begin to run when the "right accrued for which the claim is made," and that it was not concerned in that connection with variations among individual cases with respect to the method of payment, persons to

whom payments were to be made or the amounts payable to each.

The court below in effect concedes that the Government's interpretation of the statute would be correct at least as to disability benefits if the amount payable were determinable on the date of maturity. But this fact, we submit, is wholly immaterial in view of the nature of the obligation which arises at that time to pay all of the benefits provided by the contract whenever and to whomever they may be or become payable.

5. We submit that Congress enacted the limitation provisions in Section 19, and other provisions of that section as well, in recognition of the single obligation of the insurance contract, and for the purpose of permitting that obligation to be established in court only if suit is brought within the time as limited, and that it did not intend a mere restriction upon the recovery by suit of installments or portions of the benefits provided by the contract.

The provisions in Section 19 that the accrual of "the right" which starts the six-year limitation period running shall be deemed to be "the happening of *the contingency* on which the claim is founded" [italics ours] manifests, we think, an intention that the limitation period should run from the happening of the single contingency upon which reliance must be placed as having matured the policy; that there was no intention to bar merely the recovery of certain installments or portions of

insurance benefits with periods of limitations running from the date or dates of the happening of any contingency or contingencies occurring after the insurance had ceased. The terms "right" and "contingency" are each used in the singular. Also, it is obvious that no claim for insurance benefits could be founded on any contingency occurring after the insurance had ceased and, as stated above, the insurance ceases when the obligation of the contract arises at maturity.

That the contingency referred to in the statute is either the death or total permanent disability of the insured while the insurance is in force, is further shown by the provisions of Section 19 requiring a disagreement as a condition to the bringing of suit; defining "claim" and "disagreement"; authorizing the United States to bring suit in the nature of a bill of interpleader to determine the persons entitled to benefits when liability is admitted; and providing for the joinder in a suit brought by any claimant of "all persons having or claiming to have an interest in such insurance."

6. Until the decision in the instant case, it had been uniformly assumed (if not decided) by courts in passing on the six year limitation upon the consent to suit contained in Section 19 that a suit alleging maturity of the insurance by total permanent disability would be barred unless brought within six years from the alleged maturity. Indeed, in *Tyson*

v. *United States*, 297 U. S. 121, the petition filed November 17, 1932, alleged that disability had existed ever since the claimant was discharged from the Army, December 18, 1918, and this Court stated (p. 123), in passing upon the question of limitations there involved: "Manifestly, suit was not begun within six years after the right accrued * * *." See also *Munro v. United States*, 303 U. S. 36. Similar assumptions have been expressed or are implied in decisions of the Circuit Courts of Appeals, including the Circuit Court of Appeals for the Seventh Circuit, and of the District Courts. See for example, *United States v. Craig*, 83 F. (2d) 361, rehearing denied, May 12, 1936; *United States v. Tarrer*, 77 F. (2d) 423, 425 (C. C. A. 5th), certiorari denied, 296 U. S. 574; *Stallman v. United States*, 67 F. (2d) 675 (C. C. A. 8th); *Roberts v. United States*, 66 F. (2d) 273 (C. C. A. 10th); *Wilson v. United States*, 70 F. (2d) 176, 179 (C. C. A. 10th); *Carson v. United States*, 37 F. (2d) 946 (D. C. Idaho); and *Baker v. United States*, 15 Fed. Supp. 982 (D. C. Idaho).

The Government's position with respect to the claim of the beneficiary is squarely supported by the decision in the Circuit Court of Appeals for the Fifth Circuit in *United States v. Tarrer*, 77 F. (2d) 423, 425, certiorari denied, 296 U. S. 574.

7. Finally, it is submitted, the provisions in question being limitations upon a waiver of the Government's sovereign immunity from suit, should be strictly construed in its favor.

II

Even if it were to be assumed that the court below is correct in its holding with respect to the limitations upon suits to recover disability benefits, it erred in disregarding the termination of the suspension of the limitations on the effective date of the administrative denial of respondent's claim in its computation of the number of installments of benefits payable.

ARGUMENT

I

RESPONDENT'S SUIT WAS NOT BROUGHT WITHIN THE PERIOD OF LIMITATIONS PRESCRIBED BY THE STATUTE GRANTING CONSENT TO SUE THE UNITED STATES UPON CLAIMS UNDER CONTRACTS OF WAR RISK INSURANCE

This suit was brought on June 29, 1936 (R. 1), to recover total permanent disability and death benefits under a yearly renewable term policy of war risk insurance on which no premiums were paid after the month of June 1919. The consent of the United States to be sued upon claims under such policies is granted by Section 19 of the World War Veterans' Act, 1924, as amended July 3, 1930,

supra, p. 2,⁴ which provides that, in the event of "disagreement as to claim * * * under a contract of insurance between the bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States * * *." The section further provides, however, that no suit "shall be allowed * * * unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after the date of approval of this amendatory Act, whichever is the later date * * *." And, in this connection, it is provided that "for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded," and that "this limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director."

The period of one year after July 3, 1930, the date of "the amendatory Act," had long since expired when this suit was brought, and respondent's claim for benefits, filed in the Veterans' Administration on February 11, 1932, was not in time to suspend that limitation. The suit was, therefore,

⁴ Title III, World War Veterans' Act, relates entirely to war risk term and United States Government life insurance. Section 5, World War Veterans' Act, as amended (U. S. C., Title 38, Sec. 426), provides that "all decisions of questions of fact and law affecting any claimant to the benefits of Title * * * III * * * of this Act, shall be conclusive except as otherwise provided herein." The only exception thereafter appearing is found in the provisions of Section 19, *supra*.

obviously not in time under Section 19, unless saved by the six-year provision. Indeed this is, in effect, conceded in the opinion of the court below (R. 12).

It is submitted that the six-year period had also expired before respondent's suit was begun. Where, as here, liability on the part of the United States to pay any benefits to anyone under the policy is dependent upon the existence of total permanent disability while the policy was kept in force by premium payments, the six-year period within which the respondent must have brought suit, both as personal representative and as beneficiary, began to run, we contend, no later than the last day on which the policy remained in force by premium payments, i. e., in the instant case, July 31, 1919, when the grace period expired for the payment of the premium due July 1, 1919.⁵

•1. Despite the express provisions of the statute which plainly show an intention to place a time limitation upon *suit*, the construction of the court below would provide no time limitation whatever upon *suits* by veterans for total permanent disability benefits under war risk insurance policies, but merely a limitation upon the *number of installments recoverable*. No limit is placed by the policies upon the number of installments payable during the total permanent disability of the insured and, therefore, suit could be brought at any time on any one of the several million policies which

⁵ See footnote 1, *supra*, p. 5.

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were originally issued, so long as the veteran to whom any such policy was issued remains alive.* This would be true although the question as to whether the veteran is entitled to any installments under his insurance contract would be dependent upon whether he became totally permanently disabled while his policy was in force by premium payments, however far removed that date might be in the past.

The statement in the opinion of the court below (R. 13) that the obligation of the Government to pay total permanent disability benefits under a war risk term insurance contract is limited to the payment of two hundred forty installments, is contrary to the terms of the policy⁷ when considered in the light of Section 402 of the War Risk Insurance Act, as amended by the Act of October 6, 1917 (Appendix, *infra*, pp. 40-41), under which the policy was issued. That section provides that payment shall be made "during total and permanent disability," and it is quite apparent that there was no intention to limit the number of installments thus payable, in view of the provision in the section that,

* Over four and one-half million of such policies were issued during the War, amounting to about forty billion dollars. *Lynch v. United States*, 292 U. S. 571, 576, footnote 2. According to the Annual Report of the Administrator of Veterans' Affairs for the year 1937, p. 65, less than 194,447 of these policies had at that time been eliminated, as possible bases for suit, by awards of benefits upon them.

⁷ See Bulletin No. 1, Treasury Department, October 15, 1917, Appendix, *infra*, p. 42.

in making all calculations in connection with this insurance, "no deduction shall be made for continuous installments during the life of the insured *in case his total and permanent disability continues more than two hundred and forty months.*"

[Italics ours.] The Act was so interpreted, with the full approval of the Bureau of War Risk Insurance, by Judge Julian W. Mack, in explaining its provisions at a conference of officers and enlisted men of the Army and Navy, held in Washington in October 1917, immediately after the publication of the terms of the contract. (See Bulletin No. 3, Treasury Department, October 16, 1917, Appendix, *infra*, pp. 43-54.)

Moreover, under the court's construction of the limitation provisions, in their application to disability cases, as precluding merely a recovery by suit of certain installments, new suits may be brought by veterans, if living, in all cases in which prior suits have been held barred by the limitation provisions, including cases decided by this Court (*Tyson v. United States*, 297 U. S. 121; *Munro v. United States*, 303 U. S. 36).

2. The construction adopted by the court below is also at variance with an essential purpose of the statute to protect the Government against suits on stale claims. The court states, in substance, that Congress had no intention, by enacting the provisions in question, of barring suits on stale but meritorious claims (R. 15); that such an intention would have been inconsistent with the liberal purpose which runs throughout all the statutes relating

to the enforcement of claims for insurance benefits under war risk term policies. It is no doubt true that when, on May 29, 1928, Congress enacted the six-year limitation to take the place of the statutes of limitations of the various States for the primary purpose, stated in the Committee Reports, of providing uniformity, it was also actuated in part by a liberal purpose, since it provided one year from the date of that enactment within which suit might be brought on all claims, thus permitting many suits to be brought which otherwise would have been barred. (See *United States v. Sligh*, 24 F. (2d) 636 (C. C. A. 9th), and see Committee Reports which accompanied the Act of May 29, 1928, containing the original limitation provisions, Appendix, *infra*, p. 45.) However, there was clearly no intention to remove all the limitations upon suits in the enormous class of potential claims by veterans for total permanent disability benefits—a result which would follow if the interpretation of the court below were given effect.

On the contrary, when the original limitation provisions were enacted by the Act of May 29, 1928 (Appendix, *infra*, pp. 44-45). Congress was presumably aware that no premiums had been paid since the War on more than three million policies;* that every suit to recover benefits under such policies would involve as its principal issue the

* See *Lynch v. United States*, 292 U. S. 571, 576, footnote 2.

question of whether the insured was totally and permanently disabled prior to a date, at least as early as 1919, when the policy would otherwise have expired for nonpayment of premiums; and that, if an indefinite period were thereafter allowed for suit, it would be difficult, and in many cases impossible, to prepare and present a proper defense by reason of the loss of memory, death, or removal of witnesses, or loss of records. Approximately nine years had already passed when the Act of 1928 was enacted, and it would seem at least doubtful that Congress intended to impair further the Government's ability to defend itself against claims based on an alleged maturity of insurance lapsed for more than six years by allowing a longer time for suit than the one-year period after the date of the Act for which provision was made in Section 19. In this connection the Circuit Court of Appeals is in error, we submit, in construing the six-year limitation for filing suit as intended to relieve against hardships resulting from the fixing of the arbitrary date of one year after the passage of the Act (R. 15). It is submitted that the correct interpretation is just the reverse. The one-year provision was intended to relieve from the hardship which would have resulted if the six-year limitation were alone enacted, since it was then more than six years since any premiums had been paid on most of the war risk term insurance policies, and suits on all such policies would have been barred under the six-

year clause unless the one-year clause had been included.

Also, there would seem to be no justification for a construction of the statute such as that adopted by the court below, which would have the effect of barring suit as to some installments of disability benefits, but not as to others. All installments are in the same status with respect to the difficulty of the Government in making its defense since, as previously stated, the principal fact in issue as to all is the existence of total permanent disability while the policy was in force by premium payments. There would seem no basis for thus protecting the Government against suit as to part of a stale claim, and leaving it open to suit as to the rest.

Furthermore, the limitation provisions, as construed by the court below, would, in reality, not restrict even the number of installments ultimately recoverable. If the plaintiff should recover a judgment for any installments, the maturity of the insurance would be thereby necessarily established, and the Veterans' Administration, being subject to no time limitation on the claims considered by it, would presumably pay any installments barred from recovery by suit, if they were claimed. In *United States v. Worley*, 281 U. S. 339, this Court held that the judgment should not include installments maturing after the suit was brought, but stated that (p. 341)—

Undoubtedly, when one's right to recover is established by judgment, the Veterans' Administration will pay him installments maturing in his favor after the commencement of the action.

Pursuant to the view thus expressed by this Court, it has been the consistent administrative practice to pay installments, not embraced in a judgment, which have accrued subsequent to the bringing of suit, so long as the plaintiff remains totally and permanently disabled. The plaintiff's right to installments maturing prior to the commencement of an action is as well established, at least from an administrative standpoint, by judgment in his favor as is his right to those maturing thereafter. It is for this reason, no doubt, that the Solicitor of the Veterans' Administration held (Ops. Sol., V. A. Vol. 36, p. 439, Appendix, *infra*, pp. 45-48) that where the beneficiaries had obtained a judgment for death benefits based upon a finding that the insurance matured by total permanent disability while it was in force by premium payments, the accrued disability benefits of that insurance were payable to the administrator of the insured's estate, although he was not a party to the suit and was not mentioned in the judgment.

Thus, however long delayed the plaintiff's suit might be, the net result of the construction of the statute adopted by the court below would be merely to penalize him to a certain extent by requiring him to take further steps, after obtaining a judgment

for part of his claim, in order to recover the balance.

3. Under the interpretation of the court below, it would be possible for a beneficiary to bring suit as long as twenty-six years after the date of the total permanent disability alleged as the basis for such suit.* It would seem reasonable to assume that Congress considered that the Government was as much in need of protection against a suit by a beneficiary based on an allegation of total permanent disability of the insured many years in the past, as of protection against suit by an insured based on an allegation of total permanent disability likewise many years in the past.

Moreover, there is no apparent reason why the beneficiary should be given the privilege of bringing suit upon a claim based upon the total permanent disability of the insured after the insured himself has lost the privilege of asserting his claim in court based upon the same contingency. *United States v. Tarrer*, 77 F. (2d) 423 (C. C. A. 5th), certiorari denied, 296 U. S. 574. The beneficiary is merely a "volunteer." His rights are derived

* If the insured died just before the expiration of twenty years after the lapse of the policy, the beneficiary could, within six years thereafter, sue for the 240th installment. And, since the recovery of that installment would establish the maturity of the contract, the other 239 installments, non-recoverable by suit, would then be subject to administrative payment to the administrator of the estate of the insured, in which payment the beneficiary might share as next of kin. See pages 24-25, *supra*.

from the insured, since he owes them to the gratuitous designation of him as beneficiary by the insured. The insured may change the beneficiary at any time. And, even after the death of the insured, his rights under the policy may be taken from him by Congress and given to others. *White v. United States*, 270 U. S. 175. The fact upon which the court below relies (R. 13) that the benefits sought by the respondent as beneficiary did not become payable *to him* in his individual capacity until after the death of the insured, has no significance, we submit, with regard to when the limitation provisions began to run against suit by him in that capacity. In this respect, his position is obviously no different from his position as administrator. The benefits sought by him as administrator did not become payable to him until after the death of the insured, but, admittedly, limitations began to run against him prior to that date.

4. The very nature of the Government's obligation under the yearly renewable term insurance contract indicates, we think, that Congress intended the six-year limitation to run from the date of the happening of the contingency which is relied upon as having matured the contract.

Both the contract (Bulletin No. 1, Bureau of War Risk Insurance,¹⁰ Appendix, *infra*, pp. 41-42)

¹⁰ This bulletin was issued by the Director of the Bureau of War Risk Insurance, pursuant to authority contained in Section 402, War Risk Insurance Act (Appendix, *infra*, p. 40).

and the statute under which the contract was issued (Section 400, War Risk Insurance Act, Appendix, *infra*, p. 40) provide insurance against the happening of either total permanent disability or death. When either of these contingencies, against the happening of which the insurance is granted, occurs while the insurance is in force, the insurance itself ceases, since there is substituted for it the matured obligation on the part of the Government to pay the benefits of the insurance, according to the terms of the contract. This is apparent since Bulletin No. 1, *supra*, provides for the payment of the benefits of the contract upon the happening of either of the two contingencies insured against, i. e., death or total permanent disability. "Total permanent disability * * * is as much insured against as death." *Boyett v. United States*, 86 F. (2d) 66, 68 (C. C. A. 5th). The insurance is for a principal amount, although the method of its payment is by monthly installments, "the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of 3½ per cent per annum." (Bulletin No. 1, Appendix, *infra*, p. 42.) If the principal amount of the policy were payable in one sum, it could scarcely be seriously urged that limitations would run from any date subsequent to the maturity of the obligation and, we submit, the mere fact that it is provided that the obligation be discharged by payment in monthly installments does

not alter the nature of the obligation itself, nor change the date from which limitations logically should run, and evidently was intended by Congress to run. We submit that, since the obligation of the Government to pay the benefits provided by the contract, according to its terms, arises when either of the contingencies insured against occurs, it is the right to the benefits of the contract which arises correlative to this obligation of the Government to pay them, which Congress had in mind when it provided that limitations should begin to run when the "right accrued for which the claim is made," and that it was not concerned in that connection with variations among individual cases with respect to the method of payment of the obligation, the persons to whom payments are to be made, or the amounts payable to each.

In effect, the court below has conceded that the Government's interpretation of the provision in question would be clearly correct, at least as to disability benefits, if the amount payable were determinable on the date of maturity by disability, because it states "It is clear * * * that if the disability benefit consisted of a determinable amount * * * the 'happening of the contingency on which the claim was founded' would be the inception of the condition of total and permanent disability" (R. 14). But, since the obligation arises at that time to pay all of the benefits provided by the terms of the contract, whatever they may be,

and to whomever they may be payable, we submit that the lack of determinability of the amounts to be paid or the persons to receive them is wholly immaterial with respect to the time when the limitation begins to run. In this connection, it appears significant that, although the court below held that the limitation upon suit by a beneficiary begins to run from the date of death, the amount payable to a beneficiary at death is likewise not determinable.¹¹

5. We submit that Congress enacted the limitation provisions in Section 19, *supra*, and indeed the other provisions of that section, in recognition of the single obligation of the insurance contract, and for the purpose of permitting that obligation to be established by suit only if suit is brought within the time specified, and that it did not contemplate, as it might have done, a mere restriction upon the recovery by suit of installments or portions of the benefits provided by the contract.

That Congress, in providing that no suit shall be allowed unless brought within six years "after the right accrued for which the claim is made," intended that limitations should run from the happening of the single contingency upon which reliance must be placed as having matured the policy (i. e., death or total permanent disability while the insurance was in force), and to bar the recovery of any benefits after the expiration of the period specified, computed from a single date, and that it did not in-

¹¹ See footnote 2, *supra*, p. 7.

tend to bar merely the recovery of certain installments or portions of the insurance benefits by periods of limitations running from the date or dates of the happening of any contingency or contingencies occurring after the insurance had ceased, is made manifest, we think, by the provision that "it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded." This is true, we think, because the term "right" and "contingency" are both stated in the singular. Also, obviously, no claim for insurance benefits can be founded on any contingency occurring after the insurance has ceased and, as stated above, the insurance ceases when the obligation of the contract arises at maturity.

The requirement in Section 19 that a disagreement be obtained as a condition to the bringing of suit, and the definition of "claim" and "disagreement," also contained in that section, indicate clearly, we think, that the contingency on which any claim is founded, within the meaning of the limitation provisions, is either the death or permanent and total disability of the insured while the insurance is in force, and, of these two possible contingencies, is the one on which reliance must be placed as having matured the insurance and created the liability of the Government to pay benefits under the contract.

The obvious purpose of the disagreement requirement is to avoid suit in those cases in which it

may be determined administratively that while the insurance was in force the insured became totally permanently disabled or died. Congress could not have been unaware that practically every suit under Section 19, *supra*, in which the United States is the defendant, is the result of disagreement as to a claim that total permanent disability occurred while the insurance was in force, since the happening of death is seldom a fact disputed, and the statute itself provides that, if liability is admitted and there is dispute merely as to the person or persons entitled, the United States is authorized to bring suit in the nature of a bill of interpleader. (*Supra*, p. 3.)

Section 19 defines the terms "claim" and "disagreement" in these words:

The term "claim" as used in this section means any writing which alleges permanent and total disability at a time when the insurance was in force, or which uses words showing an intention to claim insurance benefits, and the term "disagreement" means a denial of the claim * * *.

The interpleader provision discloses that Congress expected every insurance contract to be paid in full, without suit, when death or total permanent disability was found to have occurred, unless there was dispute as to the person or persons entitled, and that, in the latter cases, the United States would initiate the proceedings necessary to settle the controversy with respect to admitted liability.

The definition of "claim" and the requirement of a disagreement as to claim as a condition to suit shows that Congress obviously anticipated that a claimant would allege death or total permanent disability occurring while the insurance was in force, and that the Bureau would consider whether either of these contingencies had occurred at such time. Therefore, Congress must have considered that the happening of the one or the other of these two contingencies, according to the one upon which reliance must be placed as maturing the insurance contract, would constitute "the contingency on which the claim is founded" within the meaning of the limitation provisions likewise contained in Section 19. Thus, in the instant case, the beneficiary could have made a valid claim under the foregoing definition without reference to any other contingency than alleged "permanent and total disability at a time when the insurance was in force," which shows that Congress intended permanent and total disability, and not death, to be regarded as the contingency on which the claim is founded in such a case.

Also consistent with the foregoing views is the provision of Section 19 that where suit has been brought "all persons having or claiming to have an interest in such *insurance* may be made parties to such suit." [*Italics ours.*] If, as held in effect by the court below, a suit under Section 19 is limited to determining merely the obligation of the Govern-

ment with respect to installments or to a portion of the benefits of an insurance contract, with differing periods of limitation according to the installment or the portion, the recovery of which is sought by suit, the provision for joinder logically should have been restricted to those persons having or claiming to have an interest in the installments or portion of insurance benefits sought to be recovered in the suit.

It has been held that, where there has been a disagreement as to a claim by a beneficiary that insurance has matured by total permanent disability and suit has been brought by the beneficiary, the administrator of the estate of the insured, having an interest in such insurance, was entitled to join in the suit without the necessity of filing in the Veterans' Administration a separate claim and obtaining a separate denial. *Coffey v. United States*, 97 F. (2d) 762 (C. C. A. 7th). It has also been held, where there has been a disagreement as to a claim that insurance matured by total permanent disability and suit was timely brought by the administrator, persons claiming as beneficiaries of that insurance might be joined as parties to that suit, although the time as of which they were joined was subsequent to the date as of which a separate suit might be brought by such beneficiaries. *United States v. Powell*, 93 F. (2d) 788 (C. C. A. 4th); *United States v. Tate*, 99 F. (2d) 307 (C. C.

A. 4th). Cf. *Marsh v. United States*, 97 F. (2d) 327 (C. C. A. 4th). These decisions recognize the intention of Congress, in the enactment of the joinder provision, to treat the obligation of the insurance contract as a single obligation and, if Congress intended to treat the obligation as single for the purpose of the joinder provision, it seems reasonable to assume that it intended, as the Government contends, to treat the obligation as single for the purpose of the limitation provision contained in the same section.

6. Until the decision in the instant case, it had been uniformly assumed (if not decided) by the courts, in passing on the six-year limitation upon the consent to suit embodied in Section 19, *supra*, that a suit alleging maturity of the insurance by total permanent disability, to be allowed at all, must have been brought within six years from such alleged total permanent disability while the insurance was in force. In *Tyson v. United States*, 297 U. S. 121, a petition filed November 17, 1932, alleged the disability had existed ever since the claimant was discharged from the Army, December 18, 1918, and this Court stated (p. 123), in passing upon the question of limitations there involved: "Manifestly, suit was not begun within six years after the right accrued * * *." See also *Munro v. United States*, 303 U. S. 36. Similar assumptions have been expressed or are implied in decisions of

the Circuit Courts of Appeals, including the Circuit Court of Appeals for the Seventh Circuit, and of the District Courts. See for example, *United States v. Craig*, 83 F. (2d) 361, rehearing denied, May 12, 1936; *United States v. Tarrer*, 77 F. (2d) 423, 425 (C. C. A. 5th), certiorari denied, 296 U. S. 574; *Stallman v. United States*, 67 F. (2d) 675 (C. C. A. 8th); *Roberts v. United States*, 66 F. (2d) 273 (C. C. A. 10th); *Wilson v. United States*, 70 F. (2d) 176, 179 (C. C. A. 10th); *Carson v. United States*, 37 F. (2d) 946 (D. C. Idaho); and *Baker v. United States*, 15 Fed. Supp. 982 (D. C. Idaho).

The Government's position with respect to the claim of the beneficiary is squarely supported by the decision of the Circuit Court of Appeals for the Fifth Circuit in *United States v. Tarrer*, 77 F. (2d) 423, 425, certiorari denied, 296 U. S. 574, *supra*, where it was held, upon facts substantially similar to those in the instant case, that the "contingency" on which the claim of a beneficiary under a war risk term insurance contract was founded, which starts the running of the limitation against suit, was "not the death of the insured in 1930, but his total and permanent disability at the time the policy lapsed in 1919;" and that no other limitation applied to the beneficiary's claim than applied to that of the insured. Moreover, until the decision in the instant case, there was no final holding of any court construing the provisions of Section 19, *supra*, con-

trary to the interpretation embodied in the *Tarver* case, *supra*.

7. Finally, we submit that since the provisions here in question relate to a limitation upon a waiver of the sovereign immunity to suit, they should be strictly construed in the Government's favor. *United States v. Michel*, 282 U. S. 656, 660; *Kemp v. United States*, 77 F. (2d) 213 (C. C. A. 7th); *United States v. Valadza*, 81 F. (2d) 615, 617 (C. C. A. 6th); *United States v. Arditto*, 86 F. (2d) 787, 788 (C. C. A. 6th); *Fletcher v. United States*, 92 F. (2d) 713, 717 (Ct. Cus. & Pat. App.).

II

THE COURT BELOW ERRED IN DISREGARDING THE TERMINATION OF THE SUSPENSION OF THE LIMITATIONS ON THE EFFECTIVE DATE OF ADMINISTRATIVE DENIAL OF RESPONDENT'S CLAIM IN ITS COMPUTATION OF THE NUMBER OF INSTALLMENTS OF BENEFITS PAYABLE

Even if it were to be assumed that the Circuit Court of Appeals is correct in its holding that the statute of limitations did not begin to run as to any installment until the installment accrued, it erred in holding that the bar of the statute was ineffective as to any installment which accrued within six years prior to the filing of the claim for benefits in the Veterans' Administration on February 11, 1932. It is submitted that this holding is contrary to the provisions of Section 19 of the World War Veterans' Act, 1924, as amended (*supra*, p. 4). This section provides a suspen-

sion of limitations only for the period "between the filing in the bureau of the claim sued upon and the denial of said claim." Thus the statute clearly contemplates a resumption of the running of limitations upon the effective date of the administrative denial of the claim." The court, however, ignores this fact. It states (R. 14-15):

On February 11, 1932, the running of the statute of limitations was suspended since on that date the administrator filed his claim for installments for total permanent disability benefits which had become due up to the date of the death of the insured. Consequently, the bar of the statute was not effective as to any installments payable within six years prior to February 11, 1932, and before the death of the insured; therefore, the administrator had a valid enforceable claim for all monthly installments of disability benefits which accrued during the period from February 11, 1926, up to and including the date of death of the insured, April 22, 1927.

Since the claim was denied on August 8, 1935 (R. 3), and suit was not filed until June 29, 1936 (R. 1), there was a period of 326 days, subsequent to the termination of the suspension during which

¹² Section 404 of the Act of June 29, 1936, c. 867, 49 Stat. 2034 (38 U. S. C. 445d), which provides a minimum period of ninety days from the effective date of denial within which to sue, has no bearing in this connection, since the suit was brought subsequent to the expiration of this ninety-day period.

limitations again ran. Consequently, even under the court's interpretation of the statute, there was a period of nearly eleven months during which the statute was not suspended and during which there would have been lost any right to the recovery of approximately eleven of the monthly installments which the court stated are recoverable.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below should be reversed.

ROBERT H. JACKSON,
Solicitor General.

JULIUS C. MARTIN,
Director, Bureau of War Risk Litigation.

✓ WILBUR C. PICKETT,
FENDALL MARBURY,
Special Assistants to the Attorney General.

W. MARVIN SMITH,
Attorney.

DECEMBER 1938.

APPENDIX

The first authority to grant war risk insurance was that contained in the Act of October 6, 1917, c. 105, Sec. 2, 40 Stat. 399, 409-410, amending the War Risk Insurance Act 17 adding the following sections, among others:

SEC. 400. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of \$500, and not less than \$1,000 or more than \$10,000 upon the payment of the premiums as hereinafter provided.

SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. The insurance shall not be assignable, and shall not be subject to the claims of creditors of the insured or of the beneficiary. It shall be payable only to a spouse, child, grandchild, parent, brother, or sister, and also during total and permanent disability to the injured person, or to any or all of them.

The insurance shall be payable in two hundred and forty equal monthly installments. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, paid-up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. All calculations shall be based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum, except that no deduction shall be made for continuous installments during the life of the insured in case his total and permanent disability continues more than two hundred and forty months.

Bulletin No. 1 (Regulations and Procedure, U. S. Veterans' Bureau (1930), Part II, pp. 1233, 1235) was promulgated by the Director of the Bureau of War Risk Insurance, Treasury Department, on October 15, 1917, and provides, in part, as follows:

THE UNITED STATES OF AMERICA, TREASURY
DEPARTMENT, BUREAU OF WAR RISK INSUR-
ANCE

Under the authority granted by Congress in an act * * * and subject in all respects to the provisions of such act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with this policy, the application therefor, and the terms and conditions published under au-

thority of the act, shall constitute the contract:

Hereby insures from and after the day of _____, 19____, John Doe, * * * conditioned upon the payment of premiums as herein provided, for the principal amount of \$5,000 converted into monthly installments of \$28.75 (the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of $3\frac{1}{2}$ per cent per annum), payable—

To the insured, if he/she, while this insurance is in force, shall become totally and permanently disabled, commencing with such disability as established by the award of the director of the bureau and continuing during such disability; and

To the beneficiary or beneficiaries hereinafter designated, commencing upon the death of the insured, while the insurance is in force, and (except as otherwise provided) continuing for 240 months if no installments have been paid for total and permanent disability or if any such installments have been paid, then for a number of months sufficient to make 240 in all:

* * * *

Unless other designation is made by the insured, such person or persons, within the permitted class of beneficiaries, as would under the laws of the place of residence of the insured be entitled to his personal property in case of intestacy shall be deemed designated as the beneficiary or beneficiaries to whom shall be paid any installments remaining unpaid upon the death, or disqualification under the provisions of the act, of any named beneficiary.

Bulletin No. 3 (Regulations and Procedure, U. S. Veterans' Bureau (1930), Part II, pp. 1241, 1258, 1259), was promulgated by the Director of the Bureau of War Risk Insurance, Treasury Department, on October 16, 1917, and provides, in part, as follows:

Explanation submitted by Hon. Julian W. Mack of the provisions of the military and naval insurance act, presented at a conference of officers and enlisted men of the Army and Navy, held in Washington on October 16, 17, and 18, 1917. This explanation has the full approval of the Bureau of War Risk Insurance.

WILLIAM C. DE LANOY,
Director.

Approved:

W. G. McADOO,
Secretary of the Treasury.

SCOPE AND MEANING OF ACT OF OCTOBER 6,
1917, PROVIDING FOR FAMILY ALLOWANCES,
ALLOTMENTS, COMPENSATION, AND INSUR-
ANCE FOR THE MILITARY AND NAVAL FORCES
OF THE UNITED STATES

HON. JULIAN W. MACK.

HON. JULIAN W. MACK. Mr. Chairman
and gentlemen, * * *

* * * * *

Now, in its solicitude for the men and for the families, and acting—and properly acting—in a somewhat paternal manner, the Government has provided that you can not get this insurance paid out in a lump sum, and that your family can not get this insurance paid out in a lump sum. It is not only free from creditors, but it is going to be paid

out only in monthly installments over a period of 20 years, which means 240 monthly installments. If, however, you become totally disabled and the total disability continues more than 20 years, the same monthly installments will be kept up for you as long as the disability continues.

Treasury Decision 45 (Regulations and Procedure, U. S. Veterans' Bureau (1930), Part I, p. 18), promulgated by the Director of the Bureau of War Risk Insurance, Treasury Department, on May 17, 1919, provided in part as follows:

1. When any person insured under the provisions of the war risk insurance act leaves the active military or naval service for reasons not precluding the continuation of insurance, the monthly premium which, had he remained in the service, would have been payable on the last day of the calendar month in which he was discharged will be payable on the first day of the calendar month following the date of his discharge, and thereafter monthly premiums shall be payable on the first day of each calendar month. The premium payable on the first day of any calendar month may, however, be paid at any time during such month, which shall constitute a grace period for the payment of such premium. If the premium is not paid before the expiration of such grace period the insurance shall lapse and terminate.

Section 19 of the World War Veterans' Act, 1924, was amended by the Act of May 29, 1928, c. 875, 45 Stat. 964, by adding the following:

No suit shall be allowed under this section unless the same shall have been brought within six years after the right accrued for

which the claim is made, or within one year from the date of the approval of this amendatory Act, whichever is the later date: *Provided*, That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded: *Provided further*, That the limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director. * * * No State or other statute of limitations shall be applicable to suits filed under this section. This section shall apply to all suits now pending against the United States under the provisions of this section.

In the House Committee Report (70th Cong., 1st Sess., H. Rep. 1274, p. 1) accompanying the bill which became the Act it is said:

1. Section 1 of the bill amends section 19 of the act by establishing a uniform statute of limitations for suits on contracts of insurance. At the present time, under the conformity act, the statutes of limitations of the various States apply. The periods of limitations in these statutes vary from 3 to 20 years, the average being 6 years. The committee believes that the average statute of limitation, namely, six years, should be applied to these suits, with an additional year from the date of passage of this amendatory act for all suits. * * *

The same statement is contained in the Senate Committee Report (70th Cong., 1st Sess., S. Rep. 1297, p. 1).

The Solicitor of the Veterans' Administration rendered the following opinion pursuant to the re-

quest of an Assistant Administrator on February 8, 1933:

DUCKWORTH, Benjamin Franklin
XC-843,505

You request an opinion as to whether insurance benefits may be paid to the estate of the insured veteran where a judgment was rendered finding that the deceased veteran was permanently and totally disabled from May 22, 1919, a date while his insurance was in force, to the date of his death, June 8, 1921, and where the judgment awards benefits only to the designated beneficiaries.

The pertinent facts of the case are that the veteran while in the military service duly applied for \$10,000.00 yearly renewable term insurance, designating his sister, Vira Bryan (whose full name appears to be Mrs. Selina Elvira Bryan) and his brother, Robert Martin Duckworth, as beneficiaries, each in the amount of \$5,000.00; he was discharged from the Service May 22, 1919, and his insurance lapsed for nonpayment of premium due June 1, 1919. He died June 8, 1921, when no insurance was in force.

The veteran's sister filed application for insurance benefits, alleging that the veteran became permanently and totally disabled during his military service. No decision was rendered on her claim. However, a letter was addressed to her under date of April 4, 1933, advising that in view of the provisions of the Act of March 20, 1933, favorable consideration of her claim for said insurance was barred and no further action could be taken by the Veterans' Administration.

Thereafter, the designated beneficiaries filed suit in the United States District Court for the Western District of Louisiana

against the Government on claims for said insurance. Judgment was entered by the Court on April 14, 1937. The adjudicating paragraph

"It is ORDERED, ADJUDGED, and DECREED, First, That Benjamin Franklin Duckworth was totally and permanently disabled from and after May 22, 1919, to date of his death June 8, 1921.

"Second: That plaintiffs, Mrs. Elvira (sometimes called Vera) Bryan and Robert Martin Duckworth, do have and recover from the defendant, United States of America, for all of the monthly installments of FIFTY-SEVEN AND 50/100 (\$57.50) DOLLARS or FIVE AND 75/100 (\$5.75) DOLLARS per month for each ONE THOUSAND AND NO/100 (\$1,000.00) DOLLARS of insurance, accruing from and after June 8, 1921, in the proportion of FIVE THOUSAND AND NO/100 (\$5,000.00) DOLLARS to Mrs. Elvira Bryan and FIVE THOUSAND AND NO/100 (\$5,000.00) DOLLARS to Robert Martin Duckworth.

"Third: It is further ordered, adjudged and decreed that the defendant, United States of America, deduct ten per centum (10%) of the amount of insurance sued upon and involved in this action and pay the same to Edward L. Gladney, Jr., as counsel for said plaintiffs for his services rendered before this court, payable at the rate of ten (10%) per cent of all payments due on account of said insurance as provided by law."

Insurance benefits were awarded Mrs. Elvira Bryan and Robert Martin Duckworth as designated beneficiaries, commencing June 22, 1921, and ending May 21, 1939, the end of the 240-month period from May 22, 1919, the date on which the judgment finds that the veteran became permanently and

totally disabled. Ten percent of the amount granted by the judgment has been awarded to the attorney of record.

It appears from your memorandum that no benefits have been awarded the estate of the deceased veteran from the date of permanent total disability as fixed by the judgment to the date of his death.

The judgment determines the date of permanent total disability as of a time prior to the date the right of the beneficiaries had its inception, and of a date while the insurance was in force and effect. In my opinion, if a claim is duly made, the installments of insurance accruing from the date of permanent total disability to the date of death of the veteran should be paid to the personal representative of the veterans' estate.

You also request to be advised if an attorney's fee is payable out of the accrued installments of insurance due the estate of the veteran. The Department of Justice has advised that a fair and reasonable construction to be placed upon such judgments is that the attorney is entitled to 10% of all payments made as the result of the judgment (Let. of Asst. Atty. Gen. to this Office January 25, 1929, quoted in case of Gustav H. Johnson, XC-491,185).

It is my opinion that the attorney of record in this case is entitled to 10% on the accrued installments due the veterans' estate, for the reason that it was through his efforts the judgment was entered under which certain installments of insurance are payable to said estate.

JAMES T. BRADY.

